

ORDINANCE 2008- 31

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, CREATING ARTICLE XI OF THE CLAY COUNTY LAND DEVELOPMENT CODE TO ADOPT PUBLIC SCHOOL CONCURRENCY MANAGEMENT AND PROPORTIONATE SHARE MITIGATION REQUIREMENTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Clay County Board of County Commissioners, (the "Board") finds that, in the interest of protecting the public health, safety, and general welfare, it is necessary to ensure, as new development occurs in Clay County (the "County") that adequate Public School Facilities be in place to serve those new residents; and

**WHEREAS**, the School District of Clay County (the "School District") is responsible for providing Public School Facilities to County residents; and

**WHEREAS**, the County, and all other non-exempt local governments within the county, have entered into an interlocal agreement, the Interlocal Agreement for Coordinated Planning, Public Educational Facility Siting and Review and School Concurrency in Clay County, (the "Interlocal Agreement"), with the School District, which sets forth matters required by state statute related to school concurrency, and which is intended to achieve a uniform, countywide Public School Concurrency system; and

**WHEREAS**, the County has adopted a Public Schools Facilities Element in its Comprehensive Plan in accordance with state statutory requirements in order to provide joint planning for schools and to establish a uniform, countywide Public School Concurrency system; and

**WHEREAS**, the County has adopted the Level of Service Standards as provided for in the Interlocal Agreement, and the Public Schools Facilities Element of the County's Comprehensive Plan; and

**WHEREAS**, the Board has determined that this Ordinance is necessary to mitigate the potential negative impacts on Public School Facilities if new development is allowed to occur at a rate beyond the ability of the School District to provide adequate Public School Facilities for new development; and

**WHEREAS**, the County is required to adopt Public School Concurrency land development regulations consistent with this Public Schools Facilities Element; and

**WHEREAS**, the Board hereby adopts and incorporates the purpose, intent, and findings set forth in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Clay County:

**Section 1.** The Board has reviewed this Ordinance and has determined that it is consistent with the Comprehensive Plan, including the Public School Facilities Element.

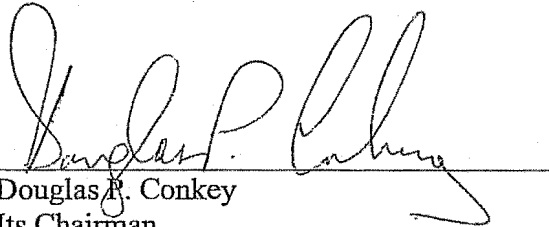
**Section 2.** The document attached as Exhibit A is hereby adopted pursuant to this ordinance and shall be codified as "Article XI, Concurrency Management for Public School Facilities" of the Clay County Land Development Code.

**Section 3.** If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

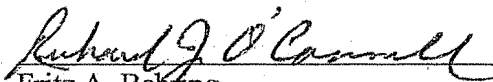
**Section 4.** This ordinance shall become effective as prescribed by Florida general law.

DULY ADOPTED by the Board of County Commissioners of Clay County, Florida, this 22<sup>nd</sup> day of July, 2008.

BOARD OF COUNTY COMMISSIONERS  
CLAY COUNTY, FLORIDA

  
\_\_\_\_\_  
Douglas R. Conkey  
Its Chairman

ATTEST:

  
\_\_\_\_\_  
Fritz A. Behring  
County Manager and Clerk of the  
Board of County Commissioners

**ARTICLE XI  
CONCURRENCY MANAGEMENT FOR PUBLIC SCHOOL FACILITIES**

**Section 20.11-1. Short Title.**

This article may be referred to and cited as the "Clay County Public School Concurrency Management Ordinance."

**Section 20.11-2. Authority.**

This article is adopted pursuant to Florida Statutes, Chapters 163 and 125; Florida Administrative Code, Rule 9J-5; the Clay County Comprehensive Plan adopted by Ordinance 92-03, as amended; and the Constitution of the State of Florida.

**Section 20.11-3. Purpose, Intent and Findings.**

(a) The purpose and intent of this Ordinance is:

- (1) To implement the provisions of the Clay County Comprehensive Plan related to the adequacy of Public School Facilities as new residential growth occurs.
- (2) To ensure that public schools needed to support new development will meet Level of Service Standards.
- (3) To ensure that the County and the School District annually adopt a financially-feasible Work Program to accommodate new residential development, based on the School District's ability to provide adequate Public School Facilities to new development.
- (4) To ensure that no Development Proposal is approved that would generate demands that exceed the capacity of public schools at the Level of Service Standards.
- (5) To ensure that adequate Public School Facilities will be in place or under actual construction as new development occurs, or within 3 years after the issuance of a building permit as defined herein, as provided by state statute, by providing a mechanism to implement Proportionate Share Mitigation for Public School Facilities where needed.
- (6) To establish uniform procedures for the review of School Concurrency Applications subject to the standards and requirements of this Ordinance.
- (7) To establish a method whereby the impacts of development on Public School Facilities can be mitigated by the cooperative efforts of the public and private sectors.

- (8) To encourage development in areas where Public School Facilities are adequate and/or planned in the Work Program as provided for and required by state law.
  - (9) To ensure that all applicable legal standards and criteria are incorporated into these procedures and requirements.
  - (10) To ensure that approval of Development Proposals will not adversely affect the public health, safety, and general welfare of existing and future residents of the County.
- (b) In adopting this Ordinance, the Board hereby finds and determines as follows:
- (1) The availability of Public School Facilities is necessary for the public health, safety, and general welfare of existing and future residents of the County.
  - (2) New growth and development within the County has an impact on the School Capacity of Public School Facilities, which impact can be mitigated by the timing and sequencing of development as provided herein.
  - (3) The School District has prepared and adopted a financially-feasible Work Program to provide the Public School Facilities needed to accommodate projected rates of growth, which Work Program will be reviewed and updated annually to reflect changes in the County's growth rate, available financial resources, and other relevant factors; and said updates will be incorporated into the Comprehensive Plan so that Level of Service Standards are maintained.
  - (4) The Level of Service Standards for each level or type of school are necessary for the protection of the public health, safety and welfare, and will not unduly inhibit new growth and development within the County.
  - (5) The impacts on Public School Facilities resulting from new development for which capacity does not exist may be mitigated by measures that either reduce projected impacts on, or increase the School Capacity of, Public School Facilities.
  - (6) This Ordinance is necessary so that continued growth does not outstrip the School District's ability to plan for and fund necessary Public School Facilities.

#### **20.11-4. Definitions.**

The words, terms, and phrases used in this Ordinance shall be defined as follows:

- (a) *Applicant or Developer or Owner* means any individual, corporation, business trust, estate trust, partnership, association, two or more persons who have a joint or common interest, governmental agency, or any other legal entity, which has submitted an Application for a Concurrency Reservation Certificate.

(b) *Application* means an application presented to the County containing the information required pursuant to this Ordinance.

(c) *Available School Capacity* means that portion of total public School Capacity that remains available for the Development Proposal after the following are subtracted: Current Student Enrollment; those student stations reserved by a Finding of Available School Capacity in the applicable School Concurrency Service Area; and those student stations reserved for Exempt Development.

(d) *Concurrency Service Area or CSA* is the geographical area in which the level of service is measured when an application for residential development is reviewed for school concurrency purposes.

(e) *Cost per Student Station Estimate* means for each type of Public School Facility, an estimate of the cost of providing Public School Facilities for a public school student, as established in the School District's Work Program. "Cost per Student Station Estimate" shall include all costs of providing instructional and core capacity including land, design, buildings, equipment and furniture, and site improvements. The cost of ancillary facilities that generally support the School District and the capital costs associated with the transportation of students shall not be included in the Cost per Student Station Estimate used for Proportionate Share Mitigation.

(f) *Current Student Enrollment* means the number of students enrolled in all Existing Public School Facilities operated by the School District in a given school year as counted at the Fall FTE.

(g) *Development Proposal* means an application for any approval of the following types of residential development, or a phase thereof or amendments thereto: final plat approval for single-family or townhome development, construction plan approval for multifamily (apartments and condos) development, or the functional equivalent thereof.

(h) *Development Review Table* – a schedule maintained by the School District and the County that tracks the availability of School Capacity over time.

(i) *Director* means the Director of Planning and Zoning.

(j) *Dwelling Unit* means a room or rooms connected together, constituting a separate, independent housekeeping establishment for a family, for owner occupancy or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping, sanitary, and kitchen facilities.

(k) *Educational Facilities Plan (EFP)* - The School District's annual comprehensive capital planning document, that includes long range planning for facility needs over a five-year, ten-year and twenty-year planning horizon, which includes the Five-Year Facility Work Plan which is annually adopted by Clay County School Board, County and municipalities for school concurrency.

- (l) *Exempt Development* – a development that meets the exemption criteria outlined in Policy 3.2 of the Public School Facilities Element.
- (m) *Existing Public School Facilities*– Public School Facilities that are already constructed and operational at the time that the School District Designee makes a finding regarding School Capacity.
- (n) *Finding of Available School Capacity* – a determination by the School District Designee that Public School Concurrency exists, based on the projected impacts of the Development Proposal. A Finding of Available School Capacity may be based upon an executed Proportionate Share Mitigation Agreement.
- (o) *Finding of No Available School Capacity* - a determination by the School District Designee that Public School Concurrency does not exist, based on the projected impacts of the Development Proposal and the failure of the applicant to proffer an acceptable Proportionate Share Mitigation Agreement.
- (p) *Florida Inventory of School Houses (FISH) Capacity* - The report of the permanent and relocatable capacity of existing public school facilities. The FISH capacity is the number of students that may be housed in a facility (school) at any given time based on a percentage (100% elementary, 90% middle and 95% high) of the total number of existing student stations and a designated size for each program.
- (q) *Full-Time Equivalent (FTE) Student Count – Fall Semester* - A fall semester count of all “full-time equivalent” students, pursuant to Chapter 1011.62, F.S.
- (r) *Level of Service (LOS)* – the comparison of public school enrollment to School Capacity in a given Concurrency Service Area.
- (s) *Level of Service Standard (LOS Standard)* – the Level of Service applied to a Concurrency Service Areas that are adopted in the Public Schools Interlocal Agreement and the Public Schools Facilities Element for each level or type of Public School Facility.
- (t) *Long-Term Concurrency Management System (LTCMS)* - a ten-year plan established to provide the necessary enrollment relief required to achieve and maintain the adopted LOS for public schools.
- (u) *Planned Public School Facilities* – Public School Facilities in the School District’s Work Program that will be in place or under actual construction within three (3) years after the approval of the Development Proposal.
- (v) *Proportionate Share Mitigation* – A developer improvement or contribution identified in a binding and enforceable agreement between the Developer, the School Board and the local government with jurisdiction over the approval of the development order to provide compensation for the additional demand on deficient public school facilities created through the residential development of the property, as set forth in Section 163.3180(13)(e), F.S.

(w) *Proportionate Share Mitigation Agreement* – a voluntary, legally-binding commitment to provide Proportionate Share Mitigation to ensure Public School Concurrency can be achieved, where School Capacity would not otherwise be adequate to support the demand resulting from approval of a Development Proposal at the time the Development Proposal is being considered. The Applicant, School District and the County shall be parties to a Proportionate Share Mitigation Agreement.

(x) *Public School Concurrency* – as provided in Section 163.3180(13)(e), F.S., a finding that the necessary Public School Facilities to maintain Level of Service Standards are in place or are scheduled in the Work Program to be under actual construction within three (3) years of approval of a Development Proposal.

(y) *Public School Facilities* –public school buildings provided by the School District, as defined by the most current edition of the Florida Inventory of School Houses (FISH), published by the Florida Department of Education, Office of Educational Facilities, or land for a Public School Facility.

(z) *Public Schools Interlocal Agreement* – the interlocal agreement between the County, non-exempt municipalities, and the School District, pursuant to § 163.31777, F.S. which establishes standards and procedures for a coordinated, uniform Public School Concurrency program throughout Clay County and which coordinates the provision of Level of Service Standards for Public School Facilities.

(aa) *School Board* – *The governing body of the School District of Clay County, a body corporate pursuant to Section 1001.41, F.S.*

(ab) *School Capacity* – the demand that can be accommodated by a Public School Facility at the Level of Service Standard, as determined by the School District.

(ac) *School Concurrency Application* – an application for the School District to make a Finding of Available School Capacity and issue a School Concurrency Reservation Letter.

(ad) *School Concurrency Deficiency Letter* - a determination by the School District Designee that Public School Concurrency has not been achieved, based on the projected impacts of the Development Proposal.

(ae) *School Concurrency Reservation Letter* - a reservation of School Capacity made by the School District after a Finding of Available School Capacity, upon the County's approval of a Development Proposal. The reservation shall be indicated on the Development Review Table.

(af) *School Concurrency Reservation Certificate* - the official document issued to the applicant by the Director or the Director's Designee upon receipt of the School Concurrency Reservation Letter by the School District.

(ag) *School District* – the School District of Clay County.

(ah) *School District Designee* – a person or committee designated to act on behalf of the School District, and to make determinations regarding whether Public School Concurrency has been achieved for School Concurrency Applications submitted to the School District by the Director.

(ai) *Total Public School Facilities* – Existing Public School Facilities and Planned Public School Facilities.

(aj) *Work Program* – a five-year Facility Work Plan that is financially feasible, as defined by state statute, and which is adopted by the School District and the County and incorporated into the Capital Improvement Element of the County's Comprehensive Plan. The Facility Work Plan itemizes Planned Public School Facilities and includes the following:

- (1) all Planned Public School Facilities, including new construction, expansions, and renovations that will create additional capacity, whether provided by the School District or through Proportionate Share Mitigation;
- (2) existing and projected enrollment of Public School Facilities;
- (3) the year in which each Planned Public School Facility will be undertaken;
- (4) the source of funding for each Planned Public School Facility and the year in which the funding becomes available;
- (5) the capacity created by each Planned Public School Facility; and
- (6) necessary data and analysis supporting the proposed Work Program.

#### **20.11-5. Level of Service Standards.**

The Level of Service Standards applicable to Public School Facilities shall be as set forth in the Public Schools Interlocal Agreement and the Public School Facilities Element of the Comprehensive Plan.

#### **20.11-6. Applicability**

(a) **Generally.** Except as otherwise specifically provided, the provisions of this Ordinance shall apply only to completed applications submitted on or after the effective date of this Ordinance, as follows:

(1) **Residential Development.**

- (i) Unless exempt or age-restricted, all residential development shall be subject to public school concurrency.
- (ii) Before approval of any Development Proposal, or phase thereof, either (A) a valid and unexpired School Concurrency Reservation Certificate or (B) a Proportionate Share Mitigation Agreement executed by the Applicant



and the School District, must be obtained. A School Concurrency Reservation Certificate may only be authorized by the County based on a Finding of Available School Capacity and receipt by the County of a School Concurrency Reservation Letter that is dated no earlier than one (1) calendar year prior to the date of the School Concurrency Reservation Certificate.

(iii) At the request of a potential applicant for a Development Proposal, a non-binding Finding of Available School Capacity may be made by the School District at any time prior to the filing of an application for a Development Proposal. However, in no event will any Development Proposal be approved prior to the County receiving a Finding of Available School Capacity and a School Concurrency Reservation Letter from the School Board.

(iv) Notwithstanding the foregoing, neither a Finding of Available School Capacity nor a School Concurrency Reservation Certificate is required for any residential development in which occupancy is restricted by deed to persons over the age of eighteen (18) years, for a period of at least thirty (30) years.

(2) **Nonresidential Development.** A Finding of Available School Capacity is not required for the nonresidential component of any Development Proposal.

#### **20.11-7. Application and Review Procedure**

(a) **When required.** Subject to the requirements of this section, a School Concurrency Application must be submitted in conjunction with any Development Proposal. No Development Proposal will be approved by the County unless a Finding of Available School Capacity and the School Concurrency Reservation Letter is first obtained.

(b) **Requirements for School Concurrency Application.**

(1) *Pre-Submittal Meeting with School District Designee.* Prior to submission of a School Concurrency Application, the Applicant shall meet with the School District Designee to confirm the scope and applicability of this Ordinance and to identify potential Public School Facility deficiencies that may need to be mitigated. At or following the pre-submittal meeting, the School District Designee shall:

- (i) Identify Available School Capacity;
- (ii) Provide other relevant and available information regarding demand for Public School Facilities and Available School Capacity;
- (iii) Summarize the scope of the School Concurrency Application requirements, which shall include, but not necessarily be limited to, the information listed in paragraph (b)(2) of this section; and

(2) *General School Concurrency Application Requirements.* The School Concurrency Application shall include:

- (i) Name, address, and phone number of the applicant;
- (ii) Property location, including parcel identification numbers and vicinity map;
- (iii) A description of the Development Proposal, including type, intensity and amount of development, adequate to determine the number and type of public school students generated by the Development Proposal;
- (iv) A phasing schedule for any Development Proposal to be completed in more than one phase;
- (v) A description of any past or proposed Public School Facility dedicated, constructed, or funded in order to mitigate the public school impacts of the Development Proposal;
- (vi) A calculation of any school impact fees that will be assessed prior to the issuance of a building permit for a residential unit;
- (vii) In the event that there is not Available School Capacity to accommodate the Development Proposal, a proposed Proportionate Share Mitigation Agreement, using the form provided by the School District, and a description of the proposed Proportionate Share Mitigation option(s) being utilized; and
- (viii) Other relevant information required by the School District that is needed to evaluate the School Concurrency Application and to make a finding with regard to Available School Capacity.

(c) **Completeness review.** Within five business days after its receipt, the Director or his Designee will determine whether the School Concurrency Application is complete and complies with the submission requirements set forth in this section. If the School Concurrency Application is complete and the submission requirements have been met, the Director will forward the School Concurrency Application to the School District Designee for review and a finding with regard to Available School Capacity. If the School Concurrency Application is not complete, the Director will notify the Applicant of its deficiencies in writing. No further review will be made until the deficiencies of the Application are remedied. Time limits for performing under this Article will be tolled during the remedial process. If any deficiencies in the Application are not remedied by the Applicant within 30 days of receipt of the above referenced written notification, the Application will be deemed withdrawn. At the time that the School Concurrency Application is determined to be complete, the Director shall send it to the School District for review.

**20.11-8. Procedures for Determining Available School Capacity.**

(a) **Identification of Available School Capacity.** Within 30 business days of the submission to the Director of a complete School Concurrency Application, a revised School Concurrency Application, or a proffered Proportionate Share Mitigation Agreement, the School District Designee shall prepare a written report that:

- (1) Identifies Available School Capacity in the relevant Concurrency Service Area, pursuant to the terms of this Ordinance and the applicable Public Schools Interlocal Agreement;
- (2) Identifies any previously dedicated, constructed, or funded Public School Facility accepted as Proportionate Share Mitigation for the public school impacts of the Development Proposal; and
- (3) Based on information provided by the Applicant and its own data and Work Program, states whether Public School Concurrency can be achieved for each type of Public School Facility sufficient to accommodate the Development Proposal.

(b) **Determination of Available School Capacity.** The School District Designee shall make a finding with regard to Available School Capacity in accordance with the requirements of this Ordinance and the Public Schools Interlocal Agreement, based on the methodology below:

(1) The School District Designee will measure Available School Capacity for each school level, based on the School Capacity of the Concurrency Service Area in which a Development Proposal is located. If School Capacity is not available in the affected Concurrency Service Area, the School District Designee shall determine whether there is Available School Capacity in any contiguous Concurrency Service Area.

(2) For each school type (elementary, middle and high), the School District shall use the following calculation methodology to determine if there is Available School Capacity:

(i) *Formula for Total Public School Facilities*

**Total Public School Facilities =**  
Existing Public School Facilities + Planned Public School Facilities

(ii) *Formula for Available School Capacity*

**Available School Capacity =**  
School Capacity - (Enrollment + Reserved)

School Capacity = the lesser of FISH capacity or core cafeteria capacity.

Enrollment = Student enrollment as counted at the Fall FTE.

Reserved = Students generated from residential developments pursuant to the approval of a School Concurrency Reservation Certificate.

(3) If a Finding of Available School Capacity is based upon the capacity of one or more contiguous Concurrency Service Areas, then the School District Designee will recommend to the School Board the means and timeframes within which the impacts of the Development Proposal will be shifted to the contiguous Concurrency Service Area. If more than one Concurrency Service Area has capacity, the School District Designee shall recommend to the School Board which Concurrency Service Area will receive the impacts of the Development Proposal. Methods to shift impacts may include, but are not necessarily limited to:

- (i) redistricting;
- (ii) transportation plans;
- (iii) operational adjustments; or
- (iv) terms or conditions agreed to by the Applicant.

**(c) Finding of Available School Capacity**

(1) Where, based on the standards and methodologies set forth herein, the School District determines that adequate capacity is available, the School District shall issue a Finding of Available School Capacity.

(2) Upon issuance of a Finding of Available School Capacity, the School District and County Designees shall allocate the amount of School Capacity to be required by the Development Proposal on the Development Review Table. It shall be reduced if, and to the same extent that, the Development Proposal is amended to reduce the impacts on Public School Facilities. The School District Designee shall issue a School Concurrency Reservation Letter to the County upon a Finding of Available Capacity and record the School Concurrency Reservation on the Development Review Table. Within 5 days of receipt of the School Concurrency Reservation Letter, the County will issue, to the applicant, a School Concurrency Reservation Certificate.

(3) If a Finding of Available School Capacity is based on a Public School Facility provided through Proportionate Share Mitigation, final approval of the Development Proposal shall not be given by the County until the execution of a Proportionate Share Mitigation Agreement by the Applicant and the School Board, pursuant to section 20.11-9. of this Ordinance. Upon approval of the Development Proposal, the County shall execute the Proportionate Share Mitigation Agreement.

(d) **CRC Expiration, Extension, and Modification**

(1) A CRC shall expire for any portion of the approved Development that meets any of the following conditions:

(i) For multifamily uses, a building permit has not been issued within six months of CRC issuance;

(ii) For multifamily uses, a certificate of occupancy has not been issued within thirty months of CRC issuance;

(iii) For single-family residential uses, a preliminary plat has not been approved by the Planning Commission within six months of CRC issuance;

(iv) For single-family residential uses, a final plat has not been approved by the Board and recorded in the public records within twenty-four months of CRC issuance;

(v) For single-family residential uses, the Board has not approved the final acceptance of all roads and drainage within twenty-four months of CRC issuance, if applicable;

(vi) The Project is completed as evidenced by the issuance of certificate of occupancy (final inspection) for all buildings and/or residential units within the Project.

(vii) The Final Development Order expires or is revoked by the County.

(viii) The Development Agreement or Fair Share Agreement authorizing the Project expires or is revoked by the County.

(2) An Applicant may request an extension prior to the expiration of a CRC. Extensions may be granted by the Department subject to the following limitations:

(i) A maximum of three (3) extensions may be granted for a CRC;

(ii) No extension will exceed six (6) months in duration;

(iii) An extension must be issued for the uses and intensities that are consistent with the current zoning and land use designation of the property. However, if a rezoning application has been filed with the Development Services Department, a three month extension may be granted for the uses and intensity that are consistent with the proposed zoning and land use designation of the property. A provision for three additional months (for a total duration of 6 months) will be allowed provided that the rezoning request is approved by the Board within the initial 3 month extension period; and

(iv) The third extension request may be granted only if construction has commenced and continued in good faith as evidenced by county inspections.

**(e) Finding of No Available School Capacity; Proportionate Share Mitigation Agreements.**

(1) If the School District Designee determines that no Available School Capacity exists to accommodate the Development Proposal and no Proportionate Share Mitigation Agreement has been accepted for the School District's and County's execution, pursuant to subsection (3)(iii) below, the School District Designee shall issue a School Concurrency Deficiency Letter, and no School Concurrency Allocation shall be reserved on the Development Review Table.

(2) Upon the receipt from the School District Designee of a School Concurrency Deficiency Letter, the Director or Director's designee shall forward the School Concurrency Deficiency Letter to the applicant within five business days of the denial. The notice must state the reasons for the denial and any actions that the applicant may take voluntarily to receive a Finding of Available School Capacity.

(3) Upon issuance of a School Concurrency Deficiency Letter, an applicant may:

(i) submit a Development Proposal for a reduced amount of development for which Available School Capacity exists;

(ii) submit an amended Development Proposal that includes the following:

1. a proposed phasing schedule setting forth the amount, location, and timing of development associated with each proposed phase;

2. a showing that Available School Capacity will exist for each phase of development; and

3. other additional information or materials identified by the School District Designee as necessary to ensure Public School Concurrency;

(iii) proffer a Proportionate Share Mitigation Agreement signed by all parties, pursuant to section 20.11-9. of this Ordinance, which shall fully mitigate the impact of the Development Proposal on Public School Facilities; or

(iv) wait until School Capacity may exist for the Development Proposal pursuant to the Work Program.

## 20.11-9. Proportionate Share Mitigation Agreements

(a) **Applicability.** The provisions of this section shall apply to an applicant that either has received a School Concurrency Deficiency Letter or wishes to proffer Proportionate Share Mitigation.

(b) **Options for Proportionate Share Mitigation.** If the applicant chooses to enter into a Proportionate Share Mitigation Agreement, he or she shall provide one or more of the following Proportionate Share Mitigation options:

- (1) Contribution of land and/or a monetary payment in conjunction with the provision of additional school capacity; or
- (2) Provision of additional student stations through the donation of buildings for use as a primary or alternative learning facility; or
- (3) Provision of additional student stations through the renovation of existing buildings for use as learning facilities; or
- (4) Construction of permanent student stations or core capacity; or
- (5) Construction of a school in advance of the time set forth in the School District's EFP; or
- (6) Construction of a charter school designed in accordance with School District standards, providing permanent capacity to the District's inventory of student stations. Use of a charter school for mitigation must include provisions for its continued existence, including but not limited to the transfer of ownership of the charter school property and/or operation of the school to the School Board.

Proportionate Share Mitigation must be identified in a Work Program, unless the School District has committed itself in a Proportionate Share Mitigation Agreement to include the mitigation in the Work Program during the next annual update to the Work Program.

In exchange for the mitigation banking of funds for the construction of a public school facility, the developer shall have the right to sell capacity credits for school capacity in excess of what was required to serve the proposed residential development for use within the same affected Concurrency Service Area. The developer shall provide a letter to the School District Designee authorizing the transfer of credits within the School Concurrency Service Area. The School District Designee shall monitor all transfers of capacity credits.

The applicant and the School District shall consult on the options available for mitigating the Concurrency Service Area affected by the Development Proposal. The agreed upon mitigation shall be described in an exhibit to the Proportionate Share Mitigation Agreement.

(c) **Determination of Amount of Proportionate Share Mitigation Required.** The amount of Proportionate Share Mitigation required from an applicant shall be calculated by applying the student generation rate multiplier to the Cost per Student Station Estimate for each school type (elementary, middle and high) for which there is not sufficient School Capacity. The minimum Proportionate Share Mitigation obligation for a Development Proposal shall be determined by the following formulas:

(1) *Formula for Number of Student Stations to Be Mitigated*

**Number Of New Student Stations Required For Mitigation (By School Type) = Available School Capacity for the Development Proposal - [Number Of Dwelling Units Generated By Development Proposal (By Housing Type) x Student Generation Multiplier (By Housing Type And School Type)]**

(2) *Formula for Cost of Mitigation*

**Cost of Proportionate Share Mitigation = Number of New Student Stations Required For Mitigation (By School Type) x Cost Per Student Station (By School Type).**

The full cost of Proportionate Share Mitigation shall be required from the Development Proposal.

(d) **Proportionate Share Mitigation Agreement.** Within 30 days of the issuance of the School District report identifying lack of availability of school capacity, the applicant shall attend a pre-application meeting with all affected agencies for which adequate school capacity does not exist to discuss mitigation options. Thereafter, the applicant shall have 30 days to submit an application for proportion share mitigation and enter into a negotiation period with the School Board not to exceed ninety days in an effort to mitigate the impact from the development through the creation of additional school capacity. Upon identification and acceptance of a mitigation option deemed financially feasible by the School Board, the developer shall enter into a binding and enforceable agreement with the School Board. The County shall then execute the agreement.

The agreement shall provide mitigation that is at least proportionate to the demand for Public School Facilities to be created by the additional or new residential units in the Development Proposal, and for which there is no Available School Capacity. However, this mitigation may not be provided unless it is first accepted by the School District. Any mitigation that is provided for in a Proportionate Share Mitigation Agreement must satisfy the demand created by the additional or new residential units, and shall be directed by the School District toward a Planned Public School Facility identified in the Work Program.

The School District shall agree to amend the Work Program during the next annual update to include the School Capacity improvement being offered as Proportionate Share Mitigation. The applicant and School District must sign the Proportionate Share Mitigation Agreement before a Finding of Available School Capacity is issued. Approval of the Development



Proposal shall be contingent upon the County's execution of the Proportionate Share Mitigation Agreement.

Failure to enter into an agreement with the School Board within the ninety (90) day negotiation period shall result in the issuance of a denial letter. This time period may be extended by mutual agreement of the parties.

(e) **Impact Fee Credit.** Impact fee credits shall be given pursuant to Section 16-66 of the School Impact Fee Ordinance.

#### **20.11-10. School District Work Program and the Capital Improvements Element**

(a) **Work Program.**

(1) *Purpose.* The purpose of the School District's Work Program is to implement the requirements of Section 1013.33, F.S. and to ensure the provision of adequate Public School Facilities as new residential development occurs in the County.

(2) *Annual Updates and Monitoring Reports.* Pursuant to the Public Schools Interlocal Agreement, the County will review, comment, and participate in the development of the School District's Work Program and will provide input with respect to the Work Program's consistency with the Comprehensive Plan. Considering the input of the County, the School District shall amend the Work Program annually by October 1 to include the immediately subsequent fifth year of Public School Facilities. Each annual update shall address the status of Public School Facilities, including, but not limited to:

- (i) The Available School Capacity by Concurrency Service Area;
  - (ii) Anticipated increases in residential development within County and the incorporated municipalities within the County;
  - (iii) The existing and projected Level Of Service for each Concurrency Service Area by year for the 5 year planning period;
  - (iv) For each Concurrency Service Area and each year of the 5-year planning period, the financial feasibility of providing the needed school facilities to achieve and maintain the Level of Service Standard;
  - (v) The current need for any Public School Facilities resulting from changes in population trends, employment growth, or other relevant factors;
  - (vi) The rate and location of Exempt Development;
  - (vii) Any amendments necessary to effectuate the purpose and intent of this Ordinance and state law, including any demand assumptions, need factors, and other matters recommended by the School District for reconsideration or revision;
- and

(viii) The projected financing for any additional School Capacity resulting from the factors set forth in subsections (i) through (v), above.

(b) **Capital Improvement Element.** The Capital Improvement Element of the County Comprehensive Plan shall be amended each year by December 1 to reflect the most recent update to the Work Program.

#### **20.11-11. Appeals**

A person substantially affected by a School Board's adequate capacity determination made as a part of the School Concurrency Process may appeal such determination through the process provided in Chapter 120, F.S.

A person substantially affected by a local government decision made as a part of the School Concurrency Process may appeal such decision using the process identified in the local government's regulations for appeal of development orders.